THE HONOURABLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.24983 of 2006

Date: 19-12-2007

Between:

Teki Eknadh and others. .. **PETITIONERS**

and

Government of A.P., and others.

.. RESPONDENTS

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ORDER:

1. Petitioners filed the present writ petition praying for a Writ of Mandamus declaring the order of the 3rd respondent in I.A.Nos.16, 17 and 18 of 2002 in O.A.No.1 of 1987, dated 30-10-2006, as illegal and arbitrary.

2. The 3rd respondent filed counter affidavit.

3. This court issued Rule Nisi on 01-12-2006.

4. Sri V.V.L.N.Sharma, learned counsel representing the writ petitioners had taken this court through the contents of the affidavit filed in support of the writ petition and the stand taken in the counter affidavit and would maintain that in the facts and circumstances of the case, what had been decided when the matter was carried even upto the Apex Court, was the limited question whether the Deputy Commissioner has jurisdiction to initiate the proceedings or not and nothing beyond thereto.

5. Learned counsel also pointed out relevant portions of the order made in the prior proceedings and also would maintain that in the light of the order of the remand made by the Commissioner of Endowments, there is no necessity of filing applications i.e., I.A.Nos.16, 17 and 18 of 2002 in O.A.No.1 of 1987. But, however, on wrong advise those applications were filed and the impugned order was made dismissing the said applications.

6. Learned counsel also would maintain that I.A.No.36 of 1987 was filed only questioning the jurisdiction of the Deputy Commissioner to entertain the dispute and the petitioners had been unsuccessful in the said contention, even in the Apex Court, by virtue of the order in Civil Appeal No.1560 of 1997, which was dismissed on 07-08-2001. The right of the petitioners to adduce evidence to establish their case on merits, had never been hesitated

nor had been negatived at any point of time and hence in the facts and circumstances of the case, especially in the light of the notice issued by the concerned Deputy Commissioner of Endowments, calling upon them to appear in person or through the counsel, the impugned order cannot be sustained.

7. Learned counsel in all facts and circumstances would submit that interlocutory applications may be thought of are misconceived remedies, but, however, the fact remains that O.A.No.1 of 1987 to be decided on merits after affording opportunity to the petitioners.

8. Learned counsel meticulously drawn the attention of this court to the order made in the prior proceedings and would maintain that as far as the jurisdiction to the Deputy Commissioner of Endowments is concerned, the question cannot be re-agitated. But, as far as affording opportunity to the petitioners is concerned, the said question was never canvassed and never had been negatived in the prior proceedings. Hence, the counsel would submit that in the facts and circumstances of the case, it would be just and proper to give opportunity to the petitioners to adduce necessary evidence on the question in controversy.

9. On the contrary, learned Assistant Government Pleader for Endowments had taken this Court through the contents of the counter affidavit filed by the 3rd respondent and would maintain that the order cannot be said to be an ex-parte order and even otherwise, the petitioners are having a remedy either to appeal under Section 88 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter referred to as “the Act” for the purpose of convenience) or a remedy of revision under Section 92 of the Act.

10. Learned Assistant Government Pleader also would submit that once the Apex Court had decided the matter, the petitioners have no right again to pray for reopening of O.A.No.1 of 87 on the self same ground.

Hence, learned Assistant Government Pleader for Endowments would submit that the writ petition is liable to be dismissed.

11. Heard the counsel and perused the records.

12. Three writ petitioners filed the present writ petition. One Sri Teki Venkata Ratnam was not shown as one of the writ petitioners and certain reasons had been explained as to why he does not figure as one of the writ petitioners.

13. The 3rd petitioner had sworn to the affidavit filed in support of the writ petition. It is stated that originally the grand father of the petitioners, one Sri Teki Venkata Narasimham garu founded Sri Panduranga Swamy Vari Temple in the year 1929. He was a great disciple of Lord Panduranga Swamy Varu. He was inspired by a dream when Lord Panduranga appeared to him in a dream. The petitioners' paternal grand father got the Temple constructed. The land was purchased by their paternal grand father himself. The Temple was constructed exclusively for the worship and benefit of members of the family of the petitioners, generation after generation. Lord Panduranga is the Elavelpu for their paternal grand father. Shrines like Anjaneyaswamy, Rukmini Devi etc., were also installed by him. They were constructed with his own funds. He was also called Bhakta Narasimham. He passed away in the year 1974. His Samadhi was also constructed there. He spent all his earnings for the construction and development of the Temple. After death of their paternal grand father, their family members took charge of the Temple and even now they are in management of the Temple.

14. It is further stated that the 3rd petitioner remained a Bachelor and dedicated his life to the worship of Lord Panduranga Swamy. He has been actually rendering Archakatvam Service and living in the Temple premises. His elder brother Panduranga Rao is doing Archakatvam in Anjaneyaswamy Temple and residing there. The marriages of the family members of the petitioners were also celebrated in the premises of the Temple and all their

members observe the Yekadasi Vratam.

15. It is further stated that Hindu Religious Endowments Board, Madras, had passed order, dated 09-11-1939 seeking to have jurisdiction over the Temple. The same was questioned by his paternal grand father through O.P.No.1 of 1946 in the Court of the District Judge, Krishna, Chilakalapudi. After elaborate trial, and on consideration of the entire material on record in correct perspective and in the light of the principles laid down in decided cases, the said Court had passed detailed order, dated 24-10-1947 setting aside the order of the said Endowment Board and declaring that the above Temple is a private family trust of the petitioners. The said order became final.

16. It is further stated that while things stood thus, ignoring the above order of the competent Civil Court, in the year 1977, again the 3rd respondent initiated action to get the Temple registered under Section 38 of Act 17/66. Further, all the petitioners and others approached this Court by filing W.P.No.2480 of 1976 to declare the provisions of Act 17/66 are not applicable to the said Temple and this Court dismissed the same directing the petitioners to raise the issue under Section 77 of the said Act before the 3rd respondent by filing an application within two weeks thereof. The petitioners filed W.A.No.20 of 77 and the same was also dismissed on 20-01-1975 granting six weeks time to take necessary steps to file application before the 3rd respondent. It appears that the petitioners have not taken further action since the 1st respondent had not taken further steps to get the Temple registered under the Provisions of the Act.

17. It is further stated that after several years, again the 4th respondent had submitted an application under Section 77 of the Act for initiating suo motu proceedings to declare the above Temple as a public religious Temple and for appointment of a Custodian. Then, the 3rd respondent started proceedings in O.A.No.1/1987. The petitioners filed I.A.No.36 of 1987 to

determine the question of jurisdiction of the 3rd respondent to initiate the proceedings suo motu etc. The 3rd respondent passed order, dated 20-07-1987 holding that he has got jurisdiction. He passed further order appointing one Sri M.Ananda Mohana Rao, Executive Officer of Sri Nageswara Swamy Temple, Kojjilipet, Machilipatnam as Custodian of the above Temple and to take charge of the Records, Accounts etc., from the concerned in Management. Aggrieved by the same, the petitioners and their father filed W.P.No.10824/1987 before this Court. The same was dismissed by this Court by order, dated 31-12-1993, leaving it open to the petitioners to place all material which they want to rely upon and adduce such evidence as they intend to adduce before the 3rd respondent in support of their contentions. Aggrieved by the same, the petitioners filed W.A.No.89 of 1994. A Division Bench of this Court had dismissed the same by judgment, dated 04-10-1996. Aggrieved by the same, the petitioners filed Civil Appeal No.1560 of 1997 before the Apex Court. Initially, the Apex Court granted interim stay in O.A.No.1/87, ultimately the said Civil Appeal was dismissed on 07-08-2001.

18. It is further stated that while the matters are pending as specified above, the 3rd respondent passed order, dated 12-03-1996, setting the petitioners exparte and disposed of the main O.A. on 12-03-1996 declaring the above Temple as Public Religious Institution as defined under Section 25(2) of the Act 30/1987. Consequently, the 2nd respondent had appointed the Executive Officer of Sri Venugopala Swamy Temple, Godugupet, as Executive Officer of the above Temple by order in D.Dis.No.G1/14598/96-2, dated 18-05-1996. Questioning the said order, the petitioners filed a revision before the 1st respondent. The 1st respondent in Memo.No.68566/Endts-IV/96-1, dated 01-11-1996, granted interim order to maintain status-quo as on 30-10-1996. Subsequent thereto, the 1st respondent had also issued Telegraphic order, dated 30-11-1996, suspending the operation of the order, dated 18-05-1996 and directing the other respondents not to interfere with the Temple and not to cause inconvenience to their father till the dispute

was resolved. Subsequent thereto, the 2nd respondent issued order in Reno.G1/28610/96, dated 02-07-1997, withdrawing the earlier order, dated 18-05-1996.

19. It is further stated that subsequent to dismissal of the appeal by the Apex Court, the petitioners approached the 2nd respondent with a request to direct the 3rd respondent to dispose of O.A.No.1/1987 afresh as no opportunity was given to the petitioners to enable them to adduce necessary oral and documentary evidence. The 2nd respondent, on consideration of the material on record, had passed order in proceedings No.B1/27863/2002, dated 28-08-2002, remanding the matter for fresh enquiry under Section 87 of the Act as per law observing that the order passed earlier in I.A.No.36/1987 in Order No.19/1987, dated 20-07-1987 was an exparte order without affording any opportunity to the petitioners to adduce evidence.

20. It is further stated that in view of the above order of the 2nd respondent, the 3rd respondent had taken up the matter for fresh enquiry under Section 87 of the Act. After remand, the petitioners filed I.A.Nos.16, 17 and 18 of 2002 to set aside the order, dated 20-07-1987 in I.A.No.36/1987 in O.A.No.1/1987 to restore the same to file, to set aside the order, dated 12-03-1996 passed in O.A.No.1/1987 and to grant temporary injunction restraining the respondents in I.A. and his men from interfering with the peaceful possession and enjoyment of the subject Temple. In fact, filing of the above applications is unnecessary, inasmuch as the 2nd respondent had already remanded the matter for fresh disposal. These applications were filed by the petitioners due to wrong advice. The 3rd respondent, without application of mind to the facts and circumstances of the case, dismissed the above IAs. by order, dated 31-10-2006. Aggrieved by the above order, the petitioners filed the above writ petition invoking Extraordinary Special Original Jurisdiction of this Court under Article 226 of the Constitution of India.

21. It is further stated that the impugned order of the 3rd respondent dated

31-10-2006 in dismissing I.A.Nos.16 to 18/2002 is illegal and arbitrary. When once the matter is remanded by the 2nd respondent for fresh enquiry as per law, with an observation that the order passed earlier in I.A.No.36/1987 in Order No.19/1987, dated 20-07-1987 is an exparte order without affording any opportunity to the petitioners to adduce evidence, the 3rd respondent himself has issued Notice, dated 14-11-2002 to appear before him along with documentary evidence, if any, in support of their claims. Therefore, the observations made by the 3rd respondent that the present applications are filed after long lapse of time, without any delay condonation petition, that the order were passed on 12-03-1996 based on record and on merits and that the recourse for the petitioners is to file an appeal before the District Court under Section 88 of the Act 30/1987 are incorrect and contrary to the material available on record. Absolutely, no reasons whatsoever are given to dismiss the present applications. The 3rd respondent is bound to dispose of the matter afresh conducting fresh enquiry and affording opportunity to the petitioners to produce and adduce necessary evidence in support of their claim. Thus, the impugned order are *per se* without any application of mind. Pursuant to the above order, the respondents are trying to appoint a Custodian/Executive Officer to take charge of the Temple from them, although the petitioners alone have been managing the Temple. The Temple is a private Temple. The order of the District Court has not been set aside or modified. There are no changed circumstances to take up the matter suo motu to decide about the nature of the Institution. The petitioners could not get any opportunity to lead evidence at any stage. Admittedly, the earlier order of the 3rd respondent is an ex-parte order as clearly held by the 2nd respondent in his order of remand. As per the order of this Court in W.P.No.10824 of 1987, dated 31-12-1993, the petitioners are entitled to place all the material on record and adduce such evidence as they intend to adduce before the 3rd respondent. Therefore, the 3rd respondent could not have dismissed O.A.No.1/1987 exparte. Since the 1st petitioner in the Court below was not readily available, he did not join the petitioners as one of the

petitioners in the above writ petition. Unless appropriate interim orders are granted, the petitioners will be put to grave prejudice and irreparable loss.

22. In the counter affidavit filed by the 3rd respondent, the allegation that the grand father of the petitioners founded the subject Temple in the year 1929 had been denied. It is further stated that it is not admitted that the paternal grand father of the petitioners got constructed the Temple and that the land was purchased by their paternal grand father himself exclusively for his worship and benefit of the members and his family, generation after generation. It is also stated that it is true that suo motu proceedings had been taken as per the powers vested on the Deputy Commissioner under Section 77 of the Old Endowments Act 17/66 and corresponding Section 87 of the New Endowments Act 30/87, which is O.A.No.1/87. It is true that the petitioners filed I.A.No.36/87 to determine the jurisdiction and it was decided holding that the Deputy Commissioner was having the jurisdiction as per order, dated 20-07-87. It is also true that an Executive Officer was appointed as a custodian of the subject Temple and thereupon the petitioners and others filed W.P.No.10824/87 and the same was dismissed by this court on 31-12-1993. Aggrieved by the same, the petitioners filed W.A.No.89/94 and this court by order, dated 04-10-1996 dismissed the same. It is true that the Apex Court confirmed the order of this Court in C.A. order, dated 07-08-2001.

23. Further, specific stand had been taken that it is not correct to state that on 12-03-1996 O.A.No.1/87 was decided exparte and the order were passed as per Section 87 of the Act and as per the record available and all order passed under Section 87 of the Act are on merits. The petitioners instead of filing Appeal under Section 88 within the period of limitation contemplated to file an interlocutory petition and a Revision etc. When the Apex Court had decided the jurisdiction of the Deputy Commissioner, the question of again reopening the interlocutory petitions more particularly I.A.No.36/87 will not arise. The petitioners are put to strict proof of all other allegations made in paras 10 and 11 of the affidavit and they are denied. The common order made in I.A.Nos.16/02, 17/02 and 18/02 in O.A.No.1/87

are quite clear without any ambiguity and the reasons for dismissing all the applications are clearly narrated in the order No.205/2006, dated 31-10-2006. If the petitioners are really aggrieved by the said order, they have to file revision under Section 92 of the Act or an appeal under Section 88 of the Act. The present writ petition is misconceived one. When the Apex Court decided the matter once for all, the petitioners have no right to seek again to reopen O.A.No.1/87 on the same ground and hence, the writ petition is liable to be dismissed.

24. These are the respective stands taken by the parties.

25. Several other proceedings and the order made by the concerned Courts in judicial hierarchy are not in serious controversy. It is also not in serious controversy that the petitioners had been unsuccessful even before the Apex Court and the question raised in the prior proceedings, which had been ultimately taken upto the Apex Court, is the question of jurisdiction of the concerned Deputy Commissioner of Endowments in initiating the action in question.

26. Section 87 of the Act deals with the power of Deputy Commissioner to decide certain disputes and matters, which reads as hereunder:

> "The Deputy Commissioner having jurisdiction shall have the power, after giving notice in the prescribed manner to the person concerned, to enquire into and decide any dispute as to the question-
> (a) Whether an institution or endowment is a charitable institution or endowment;
> (b) Whether an institution or endowment is a religious institution or endowment;
> (c) Whether any property in an endowment, if so whether it is a charitable endowment or a religious endowment;
> (d) Whether any property is a specific endowment;
> (e) Whether any person is entitled by custom or otherwise to any honour, emoluments or perquisites in any charitable or religious institution or endowment and what the established usage of such institution or endowment is in regard to any other matter;

(f) Whether any institution or endowment is wholly or partly of a secular or religious character and whether any property is given wholly or partly for secular or religious uses; or

(g) Where any property or money has been given for the support of an institution or endowment which is partly of a secular character and partly of a religious character or the performance of any service or charity connected with such institution or endowment or the performance of a charity which is partly of a secular character and partly of a religious character or where any property or money given is appropriated partly to secular uses and partly to religious uses, as to what portion of such property or money shall be allocated to secular or religious uses.

(h) Whether a person is a founder or a member from the family of the founder of an Institution or Endowment.

(2) The Deputy Commissioner may, pending his decision under sub-section (1), pass such order as he deems fit for the administration of the property or custody of the money belonging to the institution or endowment.

(3) Every decision or order of the Deputy Commissioner on confirmation by the Commissioner under this section shall be published in the prescribed manner.

(4) The Deputy Commissioner may while recording his decision under sub-section (1) and pending implementation of such decision, pass such interim order as he may deem fit for safeguarding the interests of the institution or endowment and for preventing damage to or loss or misappropriation or criminal breach of trust in respect of the properties or moneys belonging to or in the possession of the institution or endowment."

(5) Any decision or order of the Deputy Commissioner deciding whether an institution or endowment is not a public institution or endowment shall not take effect unless such decision or order is confirmed by an order of the Commissioner.

(6) The presumption in respect of matters covered by clauses (a) (b) (c) (d) and (e) in sub-section (1) is that the institution or the endowment is public one and that the burden of proof in all such cases shall lie on the person claiming the institution or the endowment to be private or the property or money to be other than that of a religious endowment or specific endowment as the case may be."

27. Sub-Section (6) of Section 87 of the Act would be relevant for the present purpose.

28. Section 88 of the Act deals with Right of Appeal against the decision of the Deputy Commissioner under Section 87 and Commissioner under Section 119, which reads as hereunder:

> "Any person aggrieved by the decision of the Deputy Commissioner or the order of the Commissioner under Section 87 and the decision of the Commissioner under Section 119 may, within ninety days from the date of receipt of the decision prefer an appeal to the District Judge and within the limits of Municipal Corporation of Hyderabad to the Chief Judge, City Civil Court."

29. Section 92 of the Act deals with power of the Commissioner to call for records and pass order, which reads as hereunder:

> "(1) The Commissioner may either suo motu or on the application, call for and examine the record of any Deputy Commissioner or Assistant Commissioner, or of any other Officer subordinate to him or of any Executive Officer or any trustee of a charitable or religious institution or endowment, other than a math or a specific endowment attached to a math in respect of any administrative or quasi-judicial decision taken or order passed under this Act, but not being a proceeding in respect of which a suit or an appeal or application, or reference to a Court is provided by this Act to satisfy himself as to the correctness, legality or propriety of such decision or order taken or passed, and if in any case, it appears to the Commissioner that such decision or order should be modified, annulled, reversed or remitted for reconsideration, he may pass order accordingly.
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> (2) The Commissioner shall not pass any order prejudicial to any party under sub-section (1), without giving him an opportunity for making representation.
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> (3) The Commissioner may stay the execution of any decision or order of the nature referred to in sub-section (1) pending the exercise of his powers under the said sub-section in respect thereof.
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> (4) Every application to the Commissioner for the exercise of his powers under this section shall be preferred within ninety days from the date on which the order or proceeding

to which the application relates was received by the applicant."

30. Section 87(1)(h) of the Act had been added by Act 27 of 2002, which specifies that the Deputy Commissioner having jurisdiction shall have the power, after giving notice in the prescribed manner to the person concerned, to enquire into and decide any dispute as to the question whether a person is a founder or a member from the family of the founder of an Institution or Endowment.

31. It is needless to say that this question had not fallen for consideration nor the same had been agitated by either of the writ petitioners.

32. No doubt, certain submissions were made in the light of the order of the remand made by the 2nd respondent and on said remand order, the concerned Deputy Commissioner of Endowments-the 3rd respondent is bound to decide the matter on merits after giving opportunity to the petitioners to adduce evidence. In the impugned order, the order made on 12-03-1996 had been referred to and it is stated that the petitioners had not filed any appeal before the District Court under Section 88 of the Act and thus the said order had attained finality. Further, it was observed that after more than ten years, without filing any application for condonation of delay, these applications were filed and as far as I.A.No.36/86 is concerned, already the Apex Court decided the jurisdiction of the Deputy Commissioner of Endowments in Civil Appeal No.1560 of 1997 and accordingly dismissed the applications. The dismissal of the applications cannot be found fault since these applications have no legs to stand. However, the main grievance ventilated by the petitioners is that originally *suo motu* proceedings had been initiated to decide the nature of the Institution, whether Public Institution or Private Institution, and the jurisdiction of the Deputy Commissioner of Endowments had been called in question and the petitioners had been unsuccessful though the matter had been carried even upto the Apex Court. This would not come in the way of the Deputy Commissioner of Endowments in affording an opportunity to the petitioners to adduce necessary evidence

and to decide the matter on merits, since at no point of time, reasonable opportunity had been given. The applications I.A.No.16, 17 and 18/2002, no doubt, are misconceived applications and the reasons recorded while dismissing those applications cannot be found fault. The order referred to in O.A.No.1/1987 in the impugned order, dated 12-03-1996, similarly before the Apex Court is of the year 1997. It is true that in the light of the order made by the Apex Court in Civil Appeal No.1560/1997, the question of restoring I.A.No.36/1987 would not arise, for the reason that the objection relating to the jurisdiction of the Deputy Commissioner of Endowments had been positively affirmed by the Apex Court negativing the contention of the petitioners that O.A.No.1/87 to be quashed for want of jurisdiction. A finding had been recorded in the impugned order that I.A.No.36/1987 had become infructuous in the light of the judgment of the Apex Court in Civil Appeal No.1560 of 1997.

33. On a careful analysis of the facts and circumstances of the case and also the clear order made, in the light of the remand order by the Commissioner of Endowments and also the notice issued fixing the date of hearing by the concerned Deputy Commissioner of Endowments-3rd respondent, at the subsequent point of time, the 3rd respondent taking a different opinion and dismissing the applications, the result of which would be not affording opportunity to adduce evidence to the petitioners in this regard, in the considered opinion of this court may not be just and proper. It is pertinent to note that the principal question, which had been raised in I.A.No.36 of 1987, was the inherent lack of jurisdiction on the part of the Deputy Commissioner of Endowments to entertain the dispute and the petitioners no doubt had been unsuccessful even before the Apex Court. But, that would not come in the way of the 3rd respondent-Deputy Commissioner of Endowments in affording opportunity to the petitioners to adduce evidence, if they choose to do so. In the event of an order being made on merits, the question of invoking either Section 86 or 92 of the Act may come into play. There is yet another additional factor to be considered. Section 87(1)(h) of

the Act was introduced by Act 27 of 2002. No doubt, in this regard an application in accordance with the Rules may have to be filed, for inviting a decision whether a person is a founder or a member of the family of an Institution or Endowment. Though the operative portion of the impugned order as such cannot be found fault, this court is inclined to rectify the defect by disposing of the writ petition with the following directions:

> The 3rd respondent to afford opportunity to the petitioners to adduce evidence on the question of controversy in O.A.No.1/87 and decide the matter afresh in accordance with law.
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> The petitioners also are given liberty to make appropriate application, if the petitioners are so advised under Section 87(i)(h) of the Act and let the 3rd respondent decide the said question also in the light of the contentions raised in this regard by the writ petitioners.
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> Let the 3rd respondent decide the O.A., at the earliest point of time, the same being sufficiently an old one.

34. With the above directions, the writ petition is accordingly disposed of. There shall be no order as to costs.

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19-12-2007

Prv